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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,090	12/29/2000	John S. Maresca	YOR920000559US1/127-0004	4024

7590 01/21/2004  
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EXAMINER
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ZHEN, WEI Y

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 01/21/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/752,090	<b>Applicant(s)</b> MARESCA ET AL.	
	<b>Examiner</b> Wei Y Zhen	<b>Art Unit</b> 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                            | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: ____                                     |

**DETAILED ACTION**

1. This Office Action is in response to the amendment filed on 11/19/2003.
2. Claims 1-43 are pending.
3. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardoza et al, U.S. Patent No. 5,630,049 in view of Aycock et al, U.S. Patent No. 5,765,138.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardoza et al, U.S. Patent No. 5,630,049 in view of Aycock et al, U.S. Patent No. 5,765,138.

As per claim 1, Cardoza et al discloses receiving at a host system a request by a user system to execute software (col. 5 lines 5-10), executing said software at the host system (col. 5 lines 4-10), sending results of said execution of said software to the user system, receiving input at the host system from the user system in response to said execution of said software, and

providing the user system with output generated as a result of said execution of said software (col. 5 lines 4-60).

Cardoza et al does not explicitly disclose the software is supplier qualification and quality management software.

Aycock et al disclose quality management software which includes various types of modules such as selection module, a qualification module and a quality module (abstract and Fig. 2 and its associated description elsewhere in the specification)

Therefore, it would have been obvious to one having ordinary skill in the art at the same time the invention was made to incorporate the teaching of Aycock et al into the system of Cardoza et al to include various types of software, such as quality management software which includes various types of modules, such as selection module, a qualification module and a quality module because one would want to use the efficient method for a general software in Cardoza to evaluate various other types of software through the network.

As per claim 2, Aycock et al discloses supplier selection; and supplier audit management (col. 1 lines 45-55).

As per claim 3, Aycock et al discloses retrieving at least one potential supplier based on specific technical requirements (col. 1 lines 45-55).

As per claim 4, Aycock et al discloses said supplied audit management as claimed (col 1 lines 45-67).

As per claim 5, Aycock et al discloses the audit data as claimed (Fig. 1 “conduct audit”).

As per claim 6, Aycock et al discloses said supplier selection is per formed using a development toolkit network software application (col. 2 line 58 to col. 4 line 44).

As per claim 7, Aycock et al discloses said supplier audit management is performed using a quality information network software application (col. 2 line 58 to col. 4 line 44).

As per claim 8, Aycock et al disclose said qualification module as claimed (col. 3 lines 41-60).

As per claim 9, Aycock et al discloses said technology qualification as claimed (col. 3 lines 41-60).

As per claim 10, Aycock et al discloses said technology qualification as claimed (col. 2 line 58 to col. 4 line 44).

As per claim 11, Aycock et al discloses said part qualification as claimed (col. 3 line 42 to col. 4 line 45).

As per claim 12, Aycock et al discloses said part qualification as claimed (col. 2 line 58 to col. 4 line 44 and col. 3 lines 41-60).

As per claim 13, Aycock et al discloses said quality module as claimed (col. 5 line 13 to col. 6 line 54).

As per claims 14, 15, 16 and 17, Aycock et al discloses process changed management as claimed (Fig. 1 and related discussion in the specification).

As per claims 18-21, Aycock et al discloses tracking problems as claimed (col. 9 line 20 to col. 13 line 12).

Claim 22 is rejected for the reason set forth in the rejection of claim 1.

Claims 23-43 are rejected for the reasons set forth in the rejections of claims 1-21 respectively.

### ***Response to Arguments***

5. Applicant's arguments filed 11/19/2003 & 09/02/2003 have been fully considered but they are not persuasive.

Applicant's argument:

Art Unit: 2122

1) Applicant's claims 1 and 23 recite "receiving at a host system a request by a user system to execute supplier qualification and quality management software, wherein said software comprises a selection module, a qualification module and a qualify module." Unlike the software in Cardoza and Aycock, the software of the applicant's invention (as in claim 1, 22 and 23) comprises three independent module: a selection module, a qualification module and a qualify module. Neither Cardoza nor Aycock discloses these features.

Examiner's response:

1) Cardoza et al discloses receiving at a host system a request by a user system to execute software (col. 5 lines 5-10). Although Cardoza et al does not explicitly disclose the software is supplier qualification and quality management software. However, Aycock et al is cited to disclose quality management software which includes various types of modules such as selection module, a qualification module and a quality module were well known in the art at the time the invention was made (abstract and Fig. 2 and its associated description elsewhere in the specification).

Therefore, it would have been obvious to one having ordinary skill in the art at the same time the invention was made to incorporate the teaching of Aycock et al into the *general system* of Cardoza et al to include various types of software, such as quality management software which includes various types of modules, such as selection module, a qualification module and a quality module because it provides the efficient method of Cardoza et al to evaluate various types of software including the software of Aycock et al through the network.

Art Unit: 2122

Applicant's argument:

2) Alternatively, assuming for the sake of argument, that the cited references are applicable, Examiner has used an improper standard in arriving at the rejection of the above claims under section 103, by failing to provide any motivation for the suggested combination. Each of the cited references is drawn to addressing very different concerns (e.g. Cardoza is directed to addressing remote testing of the software for purposing of debugging, and Aycock relates to a system for evaluating potential vendors), there are no teachings in the art or the cited reference that would have motivated one skilled in the art to make the suggested combination. Each of the cited references is drawn to addressing very different concerns (e.g. Cardoza is directed to addressing remote testing of the software for purposing of debugging, and Aycock relates to a system for evaluating potential vendors). The Examiner has used an improper standard in arriving at the rejection of the above claims under section 103, based on improper hindsight.

Examiner's response:

2) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one skilled in the art would want to use the efficient method of Cardoza et al for a general software to evaluate various other types of software including the software of Aycock et

al through the network. Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

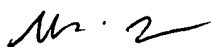
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wei Y Zhen whose telephone number is (703) 305-0437. The examiner can normally be reached on Monday-Friday, 8 a.m. - 4:30 p.m..



Art Unit: 2122

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9600.



Wei Zhen

Primary Examiner

1/13/2004